

Application Number 10/824,963 (Madigan et al.) GAU 3764 Amendment A contd.

### **REMARKS—General**

#### **Applicant's Response to Examiner's Recommended Changes to Drawings**

[001] By the above amendment, Applicants have amended Figure 1 in accordance with the examiner's recommendations and attached a corrected drawing.

#### **Applicant's Response to Examiner's Disposition of Claims**

[002] Applicants have cancelled claims 1 – 17 and claims 20 – 22 and substituted claims 23 – 42. Applicants filed a Preliminary Voluntary Amendment on August 15, 2005, in which original claims 18 and 19 were cancelled and new claims 21 and 22 were substituted reflecting the drawings in the original application. In the August 15, 2005 filing, claims 6, 7, 13, and 14 of the original application were also amended as terms "lateral," or a derivative thereof, and "longitude," or a derivative thereof, were transposed or used in a definitional sense where the other was intended. The Specification in the original application was amended to reflect the changes set forth in the Preliminary Voluntary Amendment.

Applicants

#### **Claim Objections**

[003] In the Office Action claims 9 - 20 were objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claims 9 and 16 includes the phrase "consisting of elements previously set forth in independent claim 1" which renders the claims dependent. As such, the recitations of claims 9 and 16 do not further limit independent claim 1 and are objected to in this form.

[004] The examiner has also objected to the use of the term "prior art" after the word "human" in line 2 of claims 9 and 16 and the use of the phrase "to prior art result in" after the word "improvements" in line 3 of claim 9 and line 4 of claim 16.

[005] Applicants have rewritten claim 9 (new claim 31) and claim 16 (new claim 38) in independent form in accordance with the examiner's recommendations. In addition, the rewritten claims 9 (new claim 31) and 16 (new claim 38) are corrected in order to eliminate references to prior art. In line 2 of claims 9 and 16, the phrase "prior art" has been removed after the word "human" and a colon has been inserted after the word "comprising." In line 3 of

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claim 9 and line 4 of claim 16, the phrase "to prior art result in" has been removed after the word "improvements" and the word "comprise" has been inserted after the word "improvements."

[006] As a result of rewriting and correcting claim 9 (new claim 31), claims 10 – 16 (new claims 32 – 37) include all the limitations of claim 9 and any intervening claim. As a result of rewriting and correcting claim 16 (new claim 38), claims 17 and 20 – 22 (new claims 39 – 42) include all the limitations of claim 16 and any intervening claim.

[007] The examiner rejected claims 21 and 22 (new claims 40 and 41) under 35 U.S.C. 112, second paragraph. Claims 21 and 22 include all the limitations of its base claim 16 (new claim 38). Since claims 21 and 22 further limit claim 16 and not claim 1, these claims are discussed under this section, "Claims Objections" and not section "Claim Rejections."

#### **Claim Rejections**

[008] In the Office Action claims 1 – 8, 21, and 22 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Claim 1 is a Jepsin-style claim. The examiner regards claim 1 to be vague and indefinite and recommends specific corrections to provide clarity and definiteness to the claim.

[009] Applicants have corrected claim 1 (new claim 23) in accordance with the examiner's recommendations. In line 2 of claim 1, the phrase "prior art" has been removed after the word "human." In line 2 of claim 1, a colon has been inserted after the word "comprising." In line 12 of claim 1, the phrase "to prior art result in" has been removed after the word "improvements" and the word "comprise" has been inserted after the word "improvements."

[010] As a result of rewriting and correcting claim 1 (new claim 23), claims 2 – 8 (new claims 24 – 30) include all the limitations of claim 1 and any intervening claim.

[011] The examiner rejected claims 21 and 22 (new claims 40 and 41) under 35 U.S.C. 112, second paragraph. Claims 21 and 22 are include all the limitations of its base claim 16 (new claim 38). Since these claims further limit claim 16 and not claim 1, refer to the section above titled "Claim Objections" where claim 16 is discussed.

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**Examiner's References and Differences of the Present Invention Thereover**

[012] Applicants will discuss the general novelty of the present invention with respect to references cited by the examiner in PTO-892. Then applicants will discuss the unobviousness of the present invention over the references cited by examiner in PTO-892.

**Novelty of the Present Invention over Examiner's References**

[013] U.S. Pat. No. 5,440,996 issued in August of 1995 to Cottino, titled "Track Set with Rotating Intersection for Toy Trains," claims a toy train track set comprising either two C-shaped track segments with open ends that abut a centrally located rotating platform supporting straight and curved track segments or two C-shaped track segments that connect to a common track switch that abuts a centrally located rotating platform. The rotating platform accommodates the open ends of the two C-shaped track segments or common track switch to form either a figure eight track path, a peanut-shaped track path, or a pair of closed loop track paths.

[014] The invention is comprised of tracks, straight, arced, and curved, horizontally traversed by a human. The invention is novel with respect to Cottino as it does not include each element of the toy train set.

[015] U.S. Pat No. 3,545,747 issued in December 1970 to Thomas, titled "Walking and Balance Training Aid," claims an elongated, inverse T-shaped exercise apparatus horizontally traversed by a human. The apparatus comprises a base with connecting elements and a walker's rail positioned atop the base. The top surface of the base number has color coded zones to assist walkers in determining the distance traveled along the rail, and each color coded zone is indicated by a number to assist participants in keeping score.

[016] The invention is comprised of tracks, straight, arced, and curved, horizontally traversed by a human. The invention is novel with respect to Thomas as it includes elements, arced and curved rails, a second straight rail, and steps or rungs with colored, geometrically-shaped footings, not included in the cited reference.

[017] U.S Pat. No. 3,464,624 issued in September 1969 to Christiansen, titled "Building Set Combination Including Toy Rails, Ties and Special Track Sections," claims a plurality of

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Lego-like building elements used in building sets such elements including among others, an element comprising a rectangular body with two rows of primary coupling studs protruding from its surface, a second comprising an elongated, straight body with a rail-forming rib extending lengthwise, centered, and atop the body and a corresponding recess in the bottom of the body said recess with means for coupling the element to the primary coupling studs, and a third comprising an elongated, curved body with a rail-forming rib extending lengthwise, centered, and atop the body and a corresponding recess in the bottom of the body said recess with means for coupling the element to the primary coupling studs. According to Christiansen, the elements can be used to build a straight or curved track comprising two rails and detachable crossties although such combination is not specifically claimed.

[018] The invention is comprised of tracks, straight, arced, and curved, horizontally traversed by a human. The invention is not a building set comprised of the elements claimed in Christiansen.

[019] U.S. Pat. No. 1,142,150 issued in June of 1915 to Dorrill, titled "Toy Railway," claims a toy railway comprising a continuous track or sections with connecting elements either comprising a mechanism that would permit vehicle running thereon to run continuously.

[020] The invention is comprised of tracks, straight, arced, and curved, horizontally traversed by a human. The invention is novel with respect to Dorrill as it does not include each element of the toy railway.

[021] U.S. Pat. No. 2,685,140 issued in August of 1954 to Nedwick, titled "Guide Rib Runway," claims exercise equipment comprising an elongated bar to which a plurality of elongated members are attached to one or both sides of the bar each member extending outward in a perpendicular fashion, forming a rib-like configuration, said elongated bar supported by studs attached to the bottom side of the bar with a means to receive studs at or near the ground thereby supporting the exercise equipment in a horizontal position. The equipment is traversed by walking or running between the spaces created by the members on either side of the bar.

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[022] The invention is comprised of tracks, straight, arced, and curved, horizontally traversed by a human. The invention is novel with respect to Nedwick as it does not include an element of the Guide Rib Runway.

[023] Applicants submit that invention is novel with respect to any prior art cited in the Information Disclosure Statement PTO/SB/08 filed by applicants with the original applicant and prior art references cited by examiner in the Notice of References Cited PTO-892 and made part of this Office Action and hence patentable under §102.

#### **Unobviousness of the Present Invention**

##### **A. Discussion of the Present Invention and Its Use as a Teaching Tool**

[024] The invention comprises improvements to U.S. Pat. No. 3,339,920 issued in September of 1967 to Moritz, titled "Child's Coordination Training Device." Moritz describes an enclosed rectangular ladder traversed by humans in horizontal and inclined positions, the latter position with the aid of end boards also described in the patent. The ladder is comprised of two elongated, rectangular rails joined together by a series of rungs affixed to the interior sides of the rails and two end boards each affixed to the ends of the rails at each end of the ladder. The rungs and end boards are perpendicularly affixed to the rails serving to hold the opposing rails parallel to one another. The end boards and rails are of the same height.

[025] Moritz wrote in his specification that use of the ladder will increase the development of a child's sensory and motor skills, i.e., perception, attentiveness, balance, and coordination. (Sensory and motor skills comprise the kinesthetic system.) As a result he concluded that an increase in the development of sensory and motor skills will increase a child's ability to learn allowing for earlier assimilation of academic concepts when later introduced. The ladder was intended to be used by children as an exercise device with latent educational benefits.

[026] The invention comprises tracks, straight, arced, or curved, which, like the Moritz ladder, are traversed by children. Unlike Moritz, the invention is also used as a teaching tool. A child's cognitive processes are further developed by retrieving and reinforcing cognitive concepts as a child traverses over a track.

[027] Up to now those skilled in the art of physical education equipment have not appreciated how equipment that is traversed, whether horizontally or vertically using the lower

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or upper limbs, can be used as a teaching tool further develop a child's cognitive processes. This should not be surprising. Only within the past few years has there been an effort to purposefully reinforce cognitive concepts through movement. This grass roots movement, still in its infancy, has come on the heels of recent advances in neuroscience, including brain imaging technology. Those advances suggest that early development of the kinesthetic system lays the framework necessary for the brain to input, encode, store, and retrieve cognitive concepts. That framework is comprised of procedural memory pathways created and strengthened when gross motor movements are initiated and practiced. The speed at which a stored movement is retrieved increases as the movement is practiced eventually becoming automatic. A cognitive concept that a child is asked to retrieve while it moves is retrieved using the same kinesthetic procedural memory pathways as the stored movement and, optimally with practice, at the same speed.

[028] Now we know that the brain retrieves cognitive concepts, such as alphabet, number, color, and shape recognition, while moving using kinesthetic procedural memory pathways. This fact can be viewed in real time using brain imaging technology. We previously knew that cognitive concepts were retrieved using visual or auditory procedural memory pathways. This knowledge was gained by observing the behavior of the children. Today, cognitive concepts retrieved over visual and auditory procedural memory pathways, like cognitive concepts retrieved using kinesthetic procedural memory pathways, can be viewed in real time using brain imaging technology.

[029] The invention comprises elements that are instrumental in the retrieval of cognitive concepts while a child is in the act of traversing. These elements comprise steps or rungs with footings being geometrically shaped and colored which colors and shapes are cognitive concepts. The steps or rungs operate as windows through which a child views and retrieves cognitive concepts contained on academic cards placed on the floor within the spaces. The geometric shapes of the tracks and rails, straight, arced, or curved and an apparatus are cognitive concepts. The geometric shapes of a distinct end coupler are cognitive concepts.

[030] The invention comprises elements that add challenge. An arced or curved track or rail is more difficult to traverse than a straight track or rail. An apparatus claimed in the

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application is more difficult to traverse than a track, straight, arced, or curved. A track that comprises a varied step pattern is more difficult to traverse than a track with level steps. Refer to claim 2 (new claim 24). The cognitive concept that is being retrieved while performing a more difficult motor skill initially has a greater response time. As the motor skill is practiced, the time necessary to retrieve a cognitive concept is reduced. A critical part of survival is the ability to retrieve cognitive concepts while performing more difficult motor skills.

[031] The elimination of the end boards results in tracks, straight, arced, or curved, that can be entered or exited freely. All of the steps or rungs can be viewed from the point of entry. As claimed in claim 1 (new claim 23) and limiting claims 2 and 4 – 8 (new claims 24 and 26 – 30) and Claim 9 (new claim 31) and limiting claims 11 – 15 (new claims 33 – 37), the elimination of the end boards facilitates connecting a track to a track or distinct end coupler thereby facilitating the building of the various apparatuses.

[032] The shapes of the various apparatuses claimed in the application offer inherent learning benefits. Refer to Examples 3 and 4 below.

[033] Examples follow showing how the invention enhances learning.

[034] 1. A child is instructed by the teacher to stand at an unobstructed, open end of a track, straight, arced, or curved, and step onto the apparatus, balancing either on ends of the two rails or the initial rung. The child is asked to proceed to the step that has a footing colored green. (The child may also be asked to proceed to the step that is triangular in shape, traverse the track and identify cognitive concepts contained on academic cards situated on the floor in the spaces between the steps, traverse the steps and identify the shape of the track, straight, arced, or curved, or traverse a rail and identify its shape, straight, arced, or curved.) Assuming the color green has been previously encoded and stored, the child retrieves this prior knowledge using visual and auditory procedural memory pathways. The child then proceeds to the step that has a footing colored green. The act of traversing the track to the location of the step that has a footing colored green is encoded and stored. If the child is asked to repeat the exercise, this prior act, including recognition of the color green, will be retrieved using kinesthetic procedural memory pathways as well as visual and auditory pathways. Further practice will strengthen the kinesthetic pathway permitting faster retrieval of the cognitive

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concept. The child now has three ways to retrieve the color green making for more efficient cognitive learning.

[035] 2. As claimed the invention includes a track, straight, arced, or curved, whereby the height of detachable steps may be varied. Refer to claim 2 (new claim 24). The teacher places academic cards on the floor in the spaces between the steps which are varied in height. The cards contain cognitive concepts, including letter, number, shape, color, and site word recognition, i.e., "as," "the," and "an." The child is instructed to traverse the track using the steps and at the same time retrieve the cognitive concepts contained on academic cards located in the spaces between the steps. As the child navigates from a higher step to a lower step, or vice versa, the brain is forced to operate at a different level, that is, change its point of awareness (spatial awareness) as it relates to its surroundings and reestablish (spatial orientation) a new point of awareness. As a result the brain's ability to place symbols on a page in a proper pattern or sequence and put pictures in perspective is enhanced. Navigating the steps up and down is also a more challenging motor skill than navigating the steps on a horizontal plane. The retrieval of a cognitive concept while performing a more challenging motor skill requires a greater response time. With practice the child will be able to navigate the steps more fluently, thereby reducing the time necessary to retrieve a cognitive concept. A critical part of survival is the ability to retrieve cognitive concepts while performing more difficult motor skills.

[036] 3. As claimed the invention includes an apparatus comprising tracks, straight, arced, or curved, and an octagon shaped platform located in the center of the apparatus. The rails of each track and the platform comprise elements that are used to connect tracks to tracks and tracks to the platform. Refer to claims 7 (new claim 29) and 14 (new claim 36) and Figure 11. A child is instructed by the teacher to stand on the platform. The child is asked to visualize the letter "a." The brain retrieves this cognitive concept using the visual and auditory procedural memory pathways. Then the child is asked to traverse the apparatus forming the letter "a" kinesthetically. After practicing the letter "a," the child is asked to visualize other letters of the alphabet and numerical symbols and traverse the apparatus forming the symbol. In this way the brain is learning kinesthetically. The apparatus is intentionally designed to replicate the



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shapes of lower case letters and numbers using straight, arced, and curved tracks. In addition, traversing the figure eight portion of the apparatus has physiological benefits. As a child proceeds in a counter clockwise direction (most letter formation begins in this direction) over the tracks then in a clockwise direction, its brain is forced to use all four of its quadrants leading to enhanced brain development. The apparatus is also used in the manners discussed in Examples 1 and 2.

[037] 4. As claimed the invention includes an apparatus comprising tracks, straight and arced, and five rectangular shaped platforms, one located in the center of the apparatus. The rails of each track and the platforms comprise elements that are used to connect tracks to tracks and tracks to a platform. Refer to Claims 8 (new Claim 30) and 15 (new Claim 37) and Figure 12. A child is instructed by the teacher to stand on the platform in the center of the apparatus. The child is asked to visualize north on the apparatus. The brain retrieves this cognitive concept. Then the child is asked to traverse the apparatus in a northerly direction. In this way the brain is learning kinesthetically. The apparatus is intentionally designed to teach directionality, geometric shapes, and geographic concepts using straight, arced, and curved tracks. The apparatus is also used in the manners discussed in Examples 1 and 2.

#### **B. Unobviousness of the Present Invention over Examiner's References**

[038] The references cited by the examiner include Cottino, Christiansen, and Dorrill. Each of the references disclose a track, straight, arced, or curved, or continuous track set for use with a toy train. Cottino and Dorrill disclose a track with connecting elements at the ends of the each rail. Cottino also discloses a track set with multiple track paths including a figure eight path. Christiansen discloses a track with readily detachable steps. Dorrill discloses physical features substantially similar to those disclosed in Cottino. Therefore, Dorrill will not be discussed further.

[039] The examiner also cites Thomas which discloses exercise equipment horizontally traversed by a human comprising three elongated, inverse T-shaped sections. Each section is comprised of an elongated rail attached to and atop a base which comprises a means to connect a section to a section and coloring on its surface. The examiner cites Nedwick which also discloses exercise equipment traversed by a human. There are no novel physical features

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of the invention that could be considered common to Nedwick. Therefore, Nedwick will not be discussed further.

[040] Applicants submit that the novel physical features of the invention demonstrate a new principal of operation and, therefore, are unobvious over Cottino, Christiansen, and Thomas. The references cited predate advances that have made in neuroscience, including brain imaging technology. Therefore, none of the references cited disclose an invention that combines simultaneous movement with cognition. In Thomas, exercise equipment is horizontally traversed and the surface of the base upon which the rail is situated is colored. The colors are only used to determine the distance traveled. The specification and claims makes this point clear. Cottino and Christiansen disclose inventions that involve movement over a track by a toy train. One skilled in the art of physical education equipment may conclude that human movement over such a track can be substituted for that of the toy train. However, toy trains are not asked to retrieve cognitive concepts. One skilled in the art of educational or exercise equipment may not be skilled in the field of neuroscience, and vice versa. The results achieved by this invention are unsuggested. Applicants have blazed a trail, not followed one.

[041] Applicants submit that the novel physical features of the invention are substantially and significantly different from the physical features the examiner listed as common and, therefore, are unobvious over Thomas. The novel physical features of the invention that the examiner considered common to Thomas are connecting elements and colors. Regarding the connecting elements, Thomas provides in the specification and claims that only the middle section comprises connecting elements on each end. The other two sections are comprised of a single connecting element. The invention comprises connecting elements on the ends of each rail. This difference is substantial and significant. Without connecting elements on the ends of each rail, apparatuses claimed in dependent claims 5 – 8 (new Claims 27 – 30) and dependent claims 12 – 15 (new claims 34 – 37) could not be built.

[042] Regarding the colors, Thomas provides in the specification and claims that the colors are used to determine the distance traveled by a human traversing on the rail and are not part of the traversing surface but are contained on the surface of the base which supports the rail.

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The novel physical features of the invention comprise steps or rungs with colored footings upon which a child traverses or balances itself while retrieving and reinforcing cognitive concepts, including the colors of the footings. Refer to Example 1, paragraph [034]. The differences in the use and location of the colors represent substantial and significant differences.

[043] Applicants submit that the novel physical features of the invention produce new, critical, and unsuggested results, solves a different problem than that the references solve, and the references are from a very different technical field than that of the invention and, therefore, are unobvious over Cottino and Christiansen. The prior art references do not contain any suggestion that they are combined.

[044] Cottino discloses a toy train track set comprising either two C-shaped track segments with open ends that abut a centrally located rotating platform supporting straight and curved track segments or two C-shaped track segments that connect to common track switch that abuts a centrally located rotating platform. The rotating platform accommodates the open ends of the two C-shaped track segments or common track switch to form either a figure eight track path, a peanut-shaped track path, or a pair of closed loop track paths. The track segments are comprised of straight, arced, and curved tracks each comprised of two rails with connecting elements supported on crossties that serve to hold the opposing rails in a fixed parallel relationship to one another.

[045] The novel physical features of the invention that could be considered common to Cottino are shapes of the tracks, straight, arced, or curved, tracks with connecting elements located at the ends of each rail, non-detachable crossties, exclusion of end boards, and a track set with multiple track paths including a figure eight path. However, it is the novel physical features of the invention missing from Cottino, and not common to the invention, that leads the applicants to conclude that the tracks in Cottino are substantially and significantly different from the invention.

[46] The invention comprises steps or rungs with footings geometrically shaped and colored. The shapes and colors represent cognitive concepts that are reinforced while a child traverses a track or apparatus. Refer to Example 1, paragraph [034]. The spaces between the

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steps or rungs act as windows through a child views and its brain retrieves cognitive concepts contained on academic cards placed in the spaces. Refer to Example 2, paragraph [035]. As claimed in claim 1 (new claim 23), the steps are detachable. As set out in claim 2 (new claim 24), the rails of each track comprise connecting elements for the steps permitting the height of the steps to be varied. A child that traverses the steps of a track in an up and down fashion while its brain retrieves cognitive concepts enhances the brain's ability to place symbols on a page in a proper pattern or sequence and put pictures in perspective. The steps comprising any of the apparatuses claimed in claims 5 – 8 (new claims 27 – 30) could be removed. The rails would continue to be connected rail to rail and rail to platform. The removal of the steps may accommodate a child unable to traverse over the steps. A child would traverse the pathways between the rails for the purpose of retrieving cognitive concepts such as alphabet and number recognition and learning directionality, geometric shapes, and geographic concepts. Refer to Examples 3, 4, paragraphs [036], [037]. Applicants are not making any claims with respect to apparatuses free of detachable steps. Refer to U.S. Design Pat. No. D507,601 S issued in July of 2005 to applicants.

[047] Even the novel physical features of the invention that could be considered common to Cottino such as the tracks, straight, arced, or curved, with connecting elements are substantially and significantly different in use. The shape of a track represents a cognitive concept that will be reinforced while a child is traversing a track. An arced or curved track or rail presents a child with a challenge as it is more difficult to traverse than a straight track or rail. (A critical part of survival is the ability to retrieve cognitive concepts while performing more difficult motor skills.) A single track may be used as a teaching tool.

[048] The tracks in Cottino are not intended to be used as a teaching tool. There are no cognitive concepts to reinforce or turns to navigate on a track to increase survival skills. Also, toy trains run on a continuous track set. A single track is not be used to run a toy train.

[049] Cottino also discloses a track set with multiple track paths including a figure eight path. The paths are formed by a rotating platform that accommodates the open ends of the two C-shaped track segments or common track switch. The invention comprises an apparatus in the shape of a figure eight. Refer to claims 5, 12, and 17 (new claims 27, 34, and 39). The

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apparatuses set forth in claims 5 and 12 (new claims 27 and 34) comprise a non-rotating platform located at its center that connects the non-contiguous ends of tracks. Claim 17 (new claim 39) does not comprise a platform. The platform acts as the starting point from which a child begins traversing the apparatus. The apparatus is a teaching tool. Cognitive concepts are reinforced as a child traverses the apparatus. The apparatus solves a different problem than that of the reference.

[050] Christiansen discloses Lego-like building elements used in building sets including building sets for making tracks for model railways. These Lego-like building elements include: an element that may be used as a crosstie rectangular in shape with two rows of primary coupling studs protruding from its surface; a second element that may be used a straight rail with an elongated, straight body with a rail-forming rib extending lengthwise, centered, and atop the body and a corresponding recess in the bottom of the body said recess with means for coupling the element to the primary coupling studs; and a third element that may be used as a curved rail an elongated, curved body with a rail-forming rib extending lengthwise, centered, and atop the body and a corresponding recess in the bottom of the body said recess with means for coupling the element to the primary coupling studs. According to Christiansen, the elements can be used to build a straight or curved track comprising two rails and detachable crossties although a straight or curved is not claimed.

[051] Christiansen only applies to building sets made from the elements claimed. The specification and claims make this point. The invention is not and could comprise the elements claimed by Christiansen without adding new matter.

[052] Notwithstanding, the inapplicability of the reference applicants make the following observations.

[053] The novel physical features of the invention that could then be considered common to Christiansen (if the building elements claimed, two straight or curved rail elements and multiple detachable crosstie elements, were used to build a building set comprising a straight or curved track) are the shapes of the straight and curved tracks and exclusion of end boards. The other novel physical features of the invention are substantially and significantly different.

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[054] Christiansen's rail elements, straight and curved, are substantially and significantly different than the rails of the invention for the following reasons. First, the rail elements are in the shape of an inverse T. Straight and curved rail elements comprise a narrow rail atop an elongated body. Apparently, the rail elements were designed for use with model trains. A child may have an overly difficult time traversing a rail. Second, a rail element has no means to connect to another rail element. They may abut one another if the rail elements share a single crosstie element. The rail elements would serve little purpose unless used with a crosstie element. This is not the case with the invention. The steps comprising any of the apparatuses claimed in dependent claims 5 – 8 (new dependent claims 27 – 30) could be removed to accommodate a child unable to traverse the steps. Even so, the rails comprising an apparatus could continue to be connected to other rails or a platform. A child would traverse the pathways between the rails for the purpose of retrieving cognitive concepts such as alphabet and number recognition and learning directionality, geometric shapes, and geographic concepts. Refer to Examples 3, 4, paragraphs [036], [037]. Third, the rail elements of a track lie on top of and join to the crosstie elements with aid of recesses in the bottoms of the rail elements corresponding to coupling studs protruding from the top of the crosstie elements. The location of the rail elements atop the crosstie elements severely limits the versatility of the track as a child could not traverse the track in an up and down fashion without varying the height of the rail elements. Refer to dependent claim 2 (new dependent claim 24) and Example 2, paragraph [035].

[055] A crosstie element is substantially different than a step or rung of the invention. A crosstie element is similar in shape to a Lego block. A crosstie element comprises two rows of protruding coupling studs running lengthwise and transverse atop the element. These studs are used to join a crosstie element to the bottom of a rail element. A child would have an overly difficult time traversing over or balancing upon a crosstie element because the protruding coupling studs are exposed. Because crosstie elements support the two rails of a straight or curved track, portions of a track set would have to be disassembled if the distance between the crosstie elements (stride length) were changed. A crosstie element is not geometrically shaped and colored. Therefore, cognitive concepts, color and shape recognition, could not be

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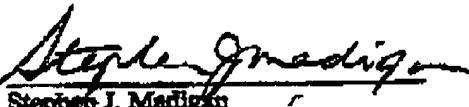
reinforced while a child traversed a track. A crossie element is detachable. However, the height of a crossie element could not be varied permitting a child to traverse a track in an up and down pattern without raising the height of the rail elements. Refer to claim 2 (new claim 24).


[056] Applicants submit that the novel physical features of the invention are unobvious with respect to references cited by examiner in the Notice of References Cited PTO-892 and made part of this Office Action and hence patentable under §103.

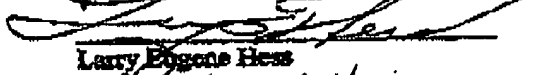

#### Conclusion

For all the above reasons, applicants submit that the specification and claims are now in proper form and that the claims all define patentability over the prior art. Therefore, applicants submit that this application is now in condition for allowance, which action they respectively solicit.

Respectfully,

  
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